IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5006 OF 2006

Vatsalabai Laxman Pawar ...Petitioner

Versus

Parubai Mahadev Jamdar

and Ors. ....Respondents

Varijakshi Shetty i/by.Mandar Limaye for the petitioners.

CORAM: S.C.DHARMADHIKARI, J.

4th December, 2007.

P.C. :

1. This writ petition is directed against an order below Exhibit 25 in Reg.Civil Suit No. 89 of 2005. This order rejects the application of the petitioner for accepting his written statement on record. The Written Statement was very much ready and infact the petitioner desired to tender it on the very day on which the application was made.

2. The reasons assigned by the defendant/petitoner before me have not been found such as would entail forfeiting his right to defend the suit. The delay of nine months has been explained. The original plaintiff also did not oppose the said Written Statement being taken on record.

3. I am satisfied after hearing the Learned Advocate for the petitioner that the discretion has been exercised improperly. The discretion in the facts of the present case should not have been exercised so as to refuse the reasonable request of the petitioner/defendant. The Written Statement was ready and he desired to tender it on the very day when the application was made. Not accepting the petitioners reasonable request has indeed prejudiced him. The discretion has not been exercised judiciously and considering the law laid down by the Hon’ble Supreme Court interpreting Order 8 Rule 1 of the Code of Civil Procedure as amended in 2002. The petition is therefore allowed. The Written Statement is taken on record, subject, however to the petitioner paying costs quantified at Rs.1,000/- within two weeks from today.

Petition allowed.

sd/-

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